

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DARNELL IVEN ADAMS, #00593403

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NOS. 4:20cv759
consolidated with 4:21-cv-053

ORDER ADOPTING REPORT AND RECOMMENDATION
CONCERNING PETITIONER'S WRIT OF MANDAMUS

The above-entitled and numbered civil actions were referred to United States Magistrate Judge Kimberly C. Priest Johnson. The Magistrate Judge issued a Report and Recommendation (Dkt. #21) which contains proposed findings of fact and recommendations for the disposition of Petitioner's motion for a default judgment. (Dkt. # 20). No objections were filed.

In his motion, Petitioner contends that the Respondent failed to timely comply with this Court's Show Cause Order, and requests this Court to grant his writ. As the Magistrate Judge correctly found, a default judgment is not a proper remedy when the Government fails to file a response or present an affirmative defense against raised issues. *Wiggins v. Procunier*, 753 F.2d 1318, 1321 (5th Cir. 1985). Moreover, the record shows that Respondent timely filed its response. On January 22, 2021, this Court issued an Order requiring the Respondent to file a response to Petitioner's petition. (Dkt. #9). On March 23, 2021, Respondent requested an extension of time until April 22, 2021 to file a response (Dkt. # 13), which the Court granted on March 24, 2021. (Dkt. # 15). On April 21, 2021, Respondent timely filed its response. (Dkt. # 19). Accordingly, even if a default judgment was a proper remedy in this situation, Respondent timely filed its response.

The Court concludes that the findings and conclusions in the Report and Recommendation are correct, and adopts the same as the findings and conclusions of this Court.

It is accordingly **ORDERED** that Petitioner's motion for a default judgment (Dkt. # 20) is **DENIED**.

SIGNED this 30th day of June, 2021.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE